

The Honorable Richard A. Jones

RECEIVED (DROP BOX)

APR 29 2021

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware
corporation; and GOPRO, INC., a Delaware
corporation,

Plaintiffs,

v.

PENGYU BUILDING MATERIALS, an
unknown entity; XUE MINGHAI, an
individual, d/b/a PENGYU BUILDING
MATERIALS/WHOLESALE OF OUTDOOR;
CHENTAOTAO, an unknown entity, d/b/a
NANA GYENFIE/EXPLORE THE
OUTDOORS; NANA GYENFIE, an individual;
HU WEI, an individual; ZHAO RONGLIN, an
individual; LI ZHONGYI, an individual; PAN
LINXING, an individual; ZHU SHAOCHUAN,
an individual; and DOES 1-10,

Defendants.

No. 2:21-cv-00358-RAJ

**DECLARATION OF SCOTT
COMMERSON IN SUPPORT OF
PLAINTIFFS' *EX PARTE* MOTION
FOR EXPEDITED DISCOVERY**

[FILED UNDER SEAL]

I, Scott Commerson, declare and state as follows:

1. I am a Partner with the law firm Davis Wright Tremain LLP ("DWT"), which represents Plaintiffs Amazon.com, Inc. ("Amazon") and GoPro, Inc. ("GoPro") (collectively, "Plaintiffs") in the above-entitled litigation. I am over 18 years of age. The statements made below are true to the best of my knowledge and belief. I make them in support of Plaintiffs' Motion for Expedited Discovery ("Motion").

1 2. In our firm's experience in multiple cases with similar fact patterns, our efforts
2 to discover identifying information about defendants results in the initial bank subpoena
3 directing us to another bank as having the client relationship. Thus, the information we start
4 with from what defendants have provided us is partial and often requires follow up with
5 additional banks for accurate identity information. One particular pattern we have found is that
6 sellers who list an account with First Century Bank usually are clients of Payoneer, a virtual
7 payment processor, which is used by many sellers (including legitimate sellers) to facilitate
8 payments into U.S. bank accounts for subsequent transfer to overseas accounts. In cases with
9 similar fact patterns, Amazon has issued subpoenas to First Century Bank. In every single
10 instance, First Century Bank has responded to the subpoena by informing Amazon that the
11 records requested within the subpoena are created and maintained by Payoneer, as part of a
12 "special use" account opened exclusively to receive automated clearinghouse ("ACH") funds.
13 Payoneer, in turn, has confirmed to Amazon that it will accept subpoenas relating to First
14 Century Bank accounts and has produced responsive documents in response to such subpoenas.

15 3. Expedited discovery through third-party subpoenas to the banks associated with
16 the bank accounts and credit cards linked to the Selling Accounts, and the email address
17 providers associated with the Selling Accounts, will likely uncover crucial information about
18 the counterfeiting operation and the individuals behind it, both known and unknown. The
19 proposed expedited discovery Plaintiffs seek from First Century Bank, Payoneer, Sina
20 Corporation, NetEase Information Technology Corporation, and Microsoft, is narrowly tailored
21 and focused on those goals—to locate the current whereabouts of known and unknown
22 Defendants, to identify Doe defendants, and to obtain key information about the location of
23 counterfeit goods and proceeds from their sale.

24 4. DWT also used investigative and law enforcement tools, including
25 TransUnion's software, TLO.

26 5. In order to prevent Defendants from diverting or hiding evidence, assets, and
27 counterfeit goods, Plaintiffs moved to temporarily seal this case during the pendency of a

1 parallel criminal investigation that Plaintiffs are actively conducting into the same Defendants
2 in China.

3 I declare under penalty of perjury that the foregoing is true and correct.
4

5 EXECUTED this 28th day of April, 2021 at Los Angeles, California.
6

7 

8 SCOTT COMMERSON
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27